

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DANIEL D. HAWK,

Petitioner,

Case No. 07-C-1032

-vs-

**STATE OF WISCONSIN,
OUTAGAMIE COUNTY,**

Respondent.

DECISION AND ORDER

This matter comes before the Court for an initial review¹ of Daniel Hawk's ("Hawk") petition for a writ of habeas corpus under 28 U.S.C. § 2254. As stated in the various orders issued to date, the Court suspected that Hawk's petition was a "mixed petition," *i.e.*, one that asserts both exhausted and unexhausted claims. Hawk's most recent filing affirms the suspicion that Hawk's petition contains unexhausted claims. (D. 8, referring to ground 17 in the amended petition). To wit, Hawk specifically admits that the State Public Defender *did not* raise numerous claims on direct appeal that Hawk now alleges in his amended petition. (D. 8, paragraph 1; D. 6, ground 17). In fact, it now appears that Hawk does not want to pursue any of the claims that actually were exhausted on direct appeal. (*Id.*)

Whether this is a mixed petition or just a petition containing unexhausted claims, it must be dismissed. Hawk insists that he exhausted all of his state court remedies, but he

¹ See Rule 4 of the Rules Governing Section 2254 Cases.

clearly did not. “Inherent in the habeas petitioner’s obligation to exhaust his state court remedies before seeking relief in habeas corpus, *see* 28 U.S.C. § 2254(b)(1)(A), is the duty to fairly present his federal claims to the state courts.” *Lewis v. Sternes*, 390 F.3d 1019, 1025 (7th Cir. 2004). In other words, all of the claims that Hawk presents in his federal habeas action must also have been presented in state court. Hawk failed to do this. To the extent that Hawk’s petition is actually a mixed petition, he offers no justification for a stay under *Rhines v. Weber*, 544 U.S. 269 (2005).

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT Hawk’s petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE.**

Dated at Milwaukee, Wisconsin, this 25th day of February, 2008.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge